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The right to food

Report by the Special Rapporteur on the right to food (Mr. Jean Ziegler), submitted in accordance with Commission on Human Rights resolution 2001/25

Addendum

Mission to Niger

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Introduction

1. At the kind invitation of the Government of the Republic of Niger, the Special Rapporteur on the right to food conducted his first country mission to Niger from 27 August to 3 September 2001. The Special Rapporteur was accompanied by a member of the Secretariat who carried out further research to support his work from 27 August to 17 September 2001. The Special Rapporteur wishes to thank the Government of Niger for the cooperation extended to him in the exercise of his mandate. He would like to express his sincere thanks to Ambassador Adamou Seydou and the Ministry for Foreign Affairs for facilitating his mission, and recognizes the courageous efforts of the Ambassador to bring the question of hunger in Niger to the attention of the Special Rapporteur and the United Nations. He would also thank Adamou Chaifou, Adviser to the Prime Minister, for his assistance. He is also thankful to His Majesty the Djermakoye, the King of the Djerma, for the great hospitality shown to him. The Djermakoye is a very respected figure, trained as a pharmacist in France, who has held leading positions in international organizations and in African Governments and who is, at the same time, learned in the traditional customary law of Niger. The Special Rapporteur is also grateful to the Office of the High Commissioner for Human Rights for its support to his mission. He also particularly appreciates the support of the Direction du développement et de la coopération (DDC) of Switzerland whose staff in Niger provided invaluable help with the organization of the mission. He would also express his appreciation to all those who took the time to meet with the mission and share their insights into the situation in Niger, and to make the mission a success.

2. The Special Rapporteur had the honour to be received by the Prime Minister of Niger, Hama Amadou, the Minister of Rural Development, the Minister of Water Resources, the Minister of the Environment and Fight against Desertification, the Minister of Trade and Industry, and the Minister of Animal Resources, and representatives of the National Committee for Early Warning. He also met with members of parliament, as well as with the President and other members of the National Commission of Human Rights and Fundamental Freedoms. He also had the honour to be received by leaders of the opposition, notably Mahmadou Issoufu, former Prime Minister, leader of the Parti nigérien pour la démocratie et socialisme (PNDS) and member of the Socialist International, and Massoudou Hassoumé, leader of the opposition in parliament. He also held talks with the country representatives of United Nations agencies, including the Food and Agriculture Organization of the United Nations and the World Food Programme, multilateral and bilateral organizations and NGOs, and with Niger's very vibrant civil society who provided a great insight into Niger. The programme included two field visits, one to Gaya and Dosso in the southern agricultural zone of Niger, and one to Maradi and Dakoro in the central agro-pastoral zone, which gave the mission a valuable opportunity to hold meetings with local government authorities, NGOs, representatives of civil society, and with communities of Nigerien farmers and pastoralists. The Special Rapporteur is particularly grateful to the offices of DDC-Niamey and Gaya and to the offices of CARE International in Niamey, Maradi and Dakoro for their generous and excellent help in organizing the visits, which gave the mission the opportunity to witness the impressive efforts of local communities, NGOs, United Nations organizations and State agencies to address the problem of hunger in Niger.

3. The objectives of the mission were: (a) to highlight the situation of malnutrition and hunger in Niger and bring it to the attention of the international community; (b) to examine food

insecurity in Niger from the perspective of the right to food; and (c) to play a catalytic role in promoting the right to food in practice. These are ambitious objectives for such a short visit, but they are important. Although the situation of food security in Niger is precarious and the threat of famine frequent, Niger is a country that is not a very high priority for the international community. The Special Rapporteur believes that the scale of poverty and food insecurity in Niger, which is a threat to social cohesion and stability and may provide the basis for increasing Islamic fundamentalism in the region, should make it a priority for the international community. Over 80 per cent of the population is touched by food insecurity. Over 4.2 million people suffer from chronic malnourishment. Things may change, but only if the right to food becomes a key priority in economic, political and social policies, both in Niger and in the international community.

4. Niger is a country inhabited by some of the greatest civilizations of humanity - the Songhai, the Djerma, the Hausa, the Tuareg, the Peul - whose earlier riches were based on dominance of the trans-Saharan caravan trade. The people of Niger are men and women of great dignity, courageous and hardworking. Yet, like other countries of the Sahel, Niger has been in economic and environmental crisis, with only brief respites, for much of the twentieth century. Since the 1970s, recurring drought and famine have become more severe. Not only is Niger's climate harsh and unforgiving, but the international climate is also not conducive to resolving the fundamental problems of the Sahel.

5. This report looks first at the situation of food insecurity in Niger, including recent threats of famine. The report then moves on to analyse the situation from the perspective of the right to food. For the analysis of the right to food in Niger, it is important first to look at the country's commitment to human rights, particularly the right to food. The following section therefore examines the legal framework governing the right to food in Niger, including obligations under international covenants and conventions, as well as its obligations under national legislation. The Government's policies and action can then be judged against the commitments which they have made to legally binding standards, at the international and domestic level. The next section moves on to look in detail at the policy framework governing the response to food insecurity and the right to food in Niger. Then, the report outlines the main findings and concerns of the Special Rapporteur regarding the realization of the right to food. Where government actions and policies have failed to meet the goal of fulfilling the Government's obligations at the international and national level, the reasons why are examined along with the obstacles to realizing the right to food. Finally, the report presents some conclusions and recommendations.

I. FOOD INSECURITY AND THE RIGHT TO FOOD IN NIGER

A. Recent threats of famine

6. The threat of famine in Niger precipitated the Special Rapporteur's mission. Ambassador Seydou, head of the delegation of Niger to the fifty-seventh session of the Commission on Human Rights, requested the Special Rapporteur, on behalf of the Government, to visit Niger. The year 2000 had seen the worst harvest since the one preceding the great famine of 1984, leading to hunger over the following months. Stocks of food (particularly the staple food, millet) were critically low across the country, both in regions traditionally in surplus and in those often in deficit. This provoked speculation on the part of grain merchants, who

withheld stocks to drive up the prices. Sharp price increases (double or triple the normal price for a bag of millet) made it very difficult for poor farmers and pastoralists with little money to pay for food. Non-governmental organizations (NGOs) informed the Special Rapporteur that many people were displaced, particularly from the regions of Diffa, Zinder, North Maradi, Tillabéry and Boboye, migrating to the cities in search of food. The local and national press carried articles about starving people reduced to breaking down termite hills to steal single grains of millet from the insects.

7. The Government publicly registered a food deficit of 160,000 tonnes for the year 2000/2001 and appealed to the international community for help to fill the food gap. With the donor community, the Government initiated an important programme based on the sale of food staples at a moderate price (called simply prix modéré in Niger). Under this programme, the Government bought food from the grain merchants and delivered it to the villages to be sold in small quantities to the poorest and most vulnerable at a moderate, subsidized, price. At the time of the visit of the Special Rapporteur, the government action appeared to have averted famine, although there was some criticism that the response had been slow in coming. At the time of the mission, it appeared that the next harvest would be sufficient to avoid the risk of famine in the next season. The rains had already started and the millet was springing up from the vast sands of southern Niger.

B. Overview of food insecurity situation

8. Nonetheless, Niger suffers from chronic food and nutrition insecurity. Food insecurity, hunger and malnutrition are closely linked to poverty, which heightens vulnerability to food crises. The country is a vast and landlocked area of 1.2 million km^2. Much of its land is desert or semi-arid; only 3 per cent is totally cultivable. It is the second poorest country in the world, barely above wartorn Sierra Leone in the UNDP Human Development Index, and getting poorer. Of a total population estimated to be around 11 million people, 4.2 million people suffer from chronic malnourishment, 80 per cent suffer from food insecurity and 61 per cent live in grinding poverty.[1] Almost 50 per cent of Niger's children under five are underweight[2] and nearly one out every three children suffers from chronic malnutrition. The mortality rate for children under 5 is 28 per cent, the third highest in the world. This terrible statistic means that one out of every four children dies before the age of 5.

9. Deficiencies in micronutrients, especially vitamin A, iron and iodine, have severe consequences for the growth and potential of Niger's children, women and men. According to a government statistical survey of the nutritional state of the population, malnutrition increased between 1992 and 1998, particularly in the department of Maradi.[3] The average vitamin A clinical deficiency rate is 2.6 per cent for each child (much worse than the threshold of 1 per cent recommended by the World Health Organization (WHO)) and the rate of blindness is 2.2 per cent.[4] Rural areas are more severely affected than urban areas - severe malnutrition in children is twice as high in rural areas.[5] Both health and education also remain challenges - 85 per cent of the population is illiterate and even this figure disguises considerable gender disparity as 92 per cent of women are illiterate compared with 77 per cent of men. There are also gender disparities in access to and rights over food and water for women.

In terms of access to water, the Ministry of Water Resources informed the Special Rapporteur that 52 per cent of the urban population and 90 per cent of the rural population do not have access to treated water.

10. The great majority of people in Niger depend on the land for their survival. Four out of five Nigeriens live in rural areas, two thirds in absolute poverty. Most people eke out a livelihood as subsistence farmers or pastoralists (or a mix of the two) - interrupted by long periods of migration to neighbouring countries to seek paid work. Food security is tightly bound to agriculture, which provides the bulk of most people's food, income and employment. Life is lived at the mercy of the rain. Food security depends on the rains, which are volatile and unpredictable and which vary widely from season to season and from year to year. If the rains do not come, or if they come as sudden violent flash floods that ravage the landscape, Niger is threatened by famine - the millet crop fails and animals die as the pasture dries up. Two major droughts have occurred during the past 30 years, in 1973 and 1984.

11. Most people are therefore affected by food insecurity, especially in rural areas. Most people experience seasonal hunger during the soudure, the period between June and September before the harvest, after the previous year's harvest has run out and when cereal prices are at their highest. Most people do not receive adequate food, in terms of quantity and quality, on a daily basis, which results in stunted physical and mental development, emaciation and low resistance to diseases, particularly amongst children. Finally, most of the people of Niger are vulnerable to food insecurity which can develop into generalized famine as a result of natural catastrophes, such as drought, which occur frequently. Most people also suffer from nutrition insecurity, given the nutritional deficiencies and the lack of consumption of fruit, vegetables and protein, particularly amongst the poorest. It is the combination of all these kinds of food and nutrition insecurity that results in chronic malnourishment and food insecurity across Niger.

12. Traditional methods of reducing vulnerability to famine included leaving fields fallow for farmers and nomadic mobility for pastoralists. However, these traditional practices have become increasingly difficult in the face of desertification, declining yields, population growth and earlier policies of sedentarization and limits on the movement of pastoralists. Traditionally, growth in agricultural production has relied on extension, rather than intensification, i.e. increasing the area of cultivation rather than using fertilizers and high-yield inputs, largely because of poverty and climatic risks. However, with the growth of the population, increasing the area of cultivation is becoming more difficult and land shortages and conflicts have contributed to violence amongst and between farmers and pastoralists. As a result of extension onto less fertile land, combined with the effects of land degradation and decline of soil fertility, agricultural yields have fallen. As grain yields have fallen, farm families have been deprived of their historic survival mechanism of storing grain in surplus years to weather years of poor harvests. Now, in years of poor rainfall, they are forced to buy grain in a market where grain prices soar when availability falls, partly due to speculation. With few cash crops, many farmers are forced to sell their food crops for the cash to pay for necessities. Less food is therefore available for family consumption.

13. The level of vulnerability differs from region to region and between modes of production. The mode of agricultural production is defined by the level of rainfall. Most of the population live in the Niger River Valley in the south-west and along the Niger-Nigeria border

where there is just enough rain to allow for agriculture, most of the time. Further north, the climate gets drier and, in the Sahara desert, arid. This land is not cultivable and much of it is suitable only for pastoralism (livestock rearing). Agriculture is primarily constrained by the lack of water, but also by declining soil fertility and desertification, sudden floods, pests, weeds (including hyacinth in the waters of the River Niger, which strangle rice plants), the high price of imported inputs, lack of roads and markets, the growing population and extreme poverty. Farmers and pastoralists struggle to meet even their subsistence needs. Migration on both a seasonal and permanent basis to neighbouring countries, particularly Côte d'Ivoire, Benin and Nigeria, is a clear consequence of the lack of food security in Niger. Only a tiny proportion of the people of Niger have access to paid jobs in the country, given the low level of development, lack of industrialization, small domestic market and lack of resources to invest in the economy.

14. The most vulnerable groups are subsistence farmers with inadequate, low quality land and no livestock, herders with fewer than three animals, pastoralists who have lost their herds and become shepherds of other people's small animals, agro-pastoralists in the process of sedentarization who have limited land and few animals, and households headed by women. Other particularly vulnerable groups include the handicapped who line the streets of Niamey. The Special Rapporteur was particularly concerned to hear about extremely vulnerable women, repudiated by their husbands, who lie hidden in hospices because of a condition called obstetrical fistula (often the result of early marriage and childbirth at an immature age, which compounded with malnutrition, can lead to serious complications, including the loss of control over their bodily functions). The Special Rapporteur did not have the time to look at issues of discrimination against particular groups, ethnic, religious or otherwise, in Niger, but this could also be a source of vulnerability, and he will examine this issue in the future.

15. Since the end of a short uranium boom in the 1970s, the economy of Niger has relied heavily on subsistence, rain-fed agriculture (only 15 per cent of agricultural production is commercialized). Its natural disadvantages, combined with a lack of adequate transport infrastructure and no connecting rail line to sea ports, some more than 1,000 km away, drives up the costs of imports and exports. Like other countries of the Sahel, Niger has been in economic and environmental crisis, with only brief respites, for the last 30 years. The collapse of uranium prices in the 1980s created a large debt burden and since the 1970s, recurring droughts and famine have become harsher. Frequent droughts have increased the fragility of the economy as well as the landscape. Although the discovery of gold and oil in the 1990s revived hopes for the economy, exploitation of these resources has still not proved sufficiently viable to provide adequate financial resources for the Government. Social unrest, including the Tuareg and Toubou rebellions, and political instability since 1989, including two military coups d'états in 1996 and another in 1999 which interrupted the democratic transition from the military regime, have compounded these economic problems. Democracy is now stronger, but the cohabitation of the various political forces remains uneasy and in the background is the continuing presence of the army. Extreme poverty and the precarious food security situation is a source of social instability and rising Islamic fundamentalism. However, the transition to democracy and the birth of a civil society in the early 1990s are extremely important developments for the human rights context. The Special Rapporteur was particularly impressed by the freedom and vitality of public debate.

II. LEGAL FRAMEWORK FOR THE RIGHT TO FOOD IN NIGER

16. For an analysis of the right to food in Niger, it is important to look at the country's commitment to human rights, particularly the right to food. This means first examining Niger's ratification of the international conventions which include specific commitments to the right to food, including any reservations. Second is an examination of the national obligations concerning the right to food to which the Government is committed. Third it is important to examine domestic laws and institutions which have an effect on the realization and implementation of the right to food. The Government's policies and actions must be assessed in the context of the commitments they have made to legally binding standards at the international and domestic level. If government actions and policies do not allow it to meet its obligations at the international level, the reasons why must be examined, along with the obstacles which prevent the Government from realizing the right to food. These obstacles, which are both endogeneous and exogeneous, are analysed in the final section.

A. International obligations

17. The State of Niger has shown itself to be committed to human rights and to international principles, through its ratification of the human rights treaties which protect the right to food. Niger became a party in March 1986 to the International Covenant on Economic, Social and Cultural Rights, which is the most important human rights instrument for the right to food as it enshrines the right to food and the right to be free from hunger in its article 11. This means that the Government has committed itself to respect, protect and fulfil the right to food. These obligations have been fully outlined in the Special Rapporteur's report to the General Assembly (A/56/210). The obligation to respect is a negative freedom - it puts limits on the ability of the State to take action that would threaten people's existing access to food, such as taking away their land. The obligation to protect the right to food means that the Government must protect its people against others seeking to violate their right to food. Finally, the obligation to fulfil means that the Government must take positive action to actively identify vulnerable groups and implement policies to enable them to feed themselves. The Government must create an enabling environment. In the final analysis, the Government is responsible for assisting those whose food security is threatened for reasons beyond their control. The Government would violate its obligation if it let people starve when they are in desperate need and have no means of feeding themselves. The right to food also prohibits discrimination in access to food on the basis of race, colour, sex, language, religion, etc.

18. The Government has also committed itself to the Convention on the Rights of the Child in September 1990. Under this convention, the Government promises, amongst other things:

(a) To take appropriate measures to combat disease and malnutrition, including through the provision of nutritious foods and drinking water (art. 24 (2) (c));

(b) To ensure that parents and children are informed about child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation (art. 24 (2) (e));

(c) To recognize the right of every child to a standard of living adequate for the child's physical development (art. 27 (1)) by providing material assistance with regard to nutrition (art. 27 (3)).

19. Niger has also acceded to the Convention on the Elimination of All Forms of Discrimination against Women, which prohibits discrimination against women in the enjoyment of human rights. The Special Rapporteur is, however, very concerned that Niger acceded to this convention with a large number of strong reservations to various articles protecting the rights of women, including articles 2 (d) and (f), 5 (a), 15 (4), 16 (1) (c), (1) (e) and (1) (g), and 29. A list of these reservations is provided in the annex to this report. The reservations mean that discrimination against women in Niger may be allowed to persist under the guise of custom and Islamic law. While the Special Rapporteur recognizes that cultural change must come about within a country, rather than be imposed from the outside, he urges the Government to promote respect of the rights of women to ensure that the situation of women evolves just as it has around the world under different cultural and religious systems.

20. Niger has not submitted regular reports on the implementation and realization of the rights guaranteed in the above-mentioned conventions. On becoming party to these international instruments, the Government of Niger agreed to submit periodic reports to the relevant treaty bodies on the realization of the rights recognized in these instruments, as part of the monitoring process. In particular, no reports have been submitted on implementation of the International Covenant on Economic, Social and Cultural Rights. While understanding this could be difficult for the Government, which has extremely limited resources, the Special Rapporteur encourages the Government to comply with its international obligations. He was encouraged to hear that a review is under way within the Government to this end.

B. National obligations

21. Under the new Constitution of the Fifth Republic (1999), Niger has committed itself to protect the security and integrity of the person, and thereby a range of economic, social and cultural rights. The right to food is not explicitly mentioned in the Constitution. However, several agencies and NGOs drew the Special Rapporteur's attention to a number of articles that can be understood as relevant to the right to food as they protect the integrity of the person, for which access to food and water is fundamental. For example, Title II, article 11 states: "Everyone has the right to life, to health, to liberty, to security, to physical and mental integrity, to education and to instruction under the conditions defined by the law."

22. Article 21 protects the right to property and prohibits the State from requisitioning property without adequate compensation. Article 18 also gives the State special responsibilities to provide protection to vulnerable groups, including mothers and children, young people, old people and handicapped persons.

23. There are no national laws specifically protecting food security, nor national framework legislation that makes the right to food a priority. As the Special Rapporteur recommended in his previous report to the General Assembly (A/56/210), framework legislation is important as it

would provide an overarching framework that articulates the right to food as a national priority and a point of departure to begin the harmonization and revision of diverse laws and sectoral policies so that they all comply with obligations under the right to food. There are, however, many policies that the Government has put in place aimed at food security; these are outlined in the next section.

24. There is also legislation which sets legal standards in relation to food and water quality, which are relevant to the right to food. For example, Ordinance No. 93-013 of 2 March 1993 sets out the Public Hygiene Code governing the production and distribution of food and water. The mission met with one NGO fighting for stronger consumer rights, the Association for the Defence of Consumer Rights (ADDC). Work on the protection of consumers is important in the context of weak enforcement of this type of legislation in practice. The work of NGOs such as ADDC is very important for monitoring the implementation and adequacy of legislation in place.

25. In terms of access to water, the legal framework is broad. Ordinance No. 93-014 of 2 March 1993 sets out a framework for managing water resources. Under Ordinance No. 93-015 of 2 March 1993, Guiding Principles of the Code rural have been adopted authorizing the establishment of a land commission for each arrondissement to manage land and water issues. These principles outline rules for equal access by the rural population to national resources and for the management of conflicts over these resources. The Code rural is an important document which aims to harmonize and integrate all existing laws and rules governing access to natural resources into one document, as part of an effort to reduce conflicts between pastoralists and farmers.

26. It should be noted here that Niger has several coexisting and complex legal systems, which have implications for the implementation of human rights, including the right to food. The law of Niger is made up of three different legal systems: modern law (the code civil based on the Napoleonic tradition), which is written; traditional customary law, which is based on oral tradition, and Islamic law, which is based on oral tradition and interpretations of the texts of the Koran. Customary law is based on the pre-Islamic traditions and culture of Niger, and varies between regions and ethnicities. Islamic law is based on prescriptions that govern daily life and stipulate religious obligations, such as prayer. In practice, customary law and Islamic law have become indistinguishable from one another in a syncretic mix. This pluralist system shows the rich legal heritage of the country, but is also a challenge to the implementation of human rights, including the right to food, particularly for women.

27. Few people, particularly in rural areas, have any access to a system of justice based on modern law with magistrates and judges. Most local-level disputes (such as conflicts over land and divorce) are settled in a traditional court and decided on the basis of a mixture of Islamic and traditional customary law rather than modern law, although theoretically these are bound to stay within the laws of the State. Although only the magistrates and judges at the courts have formal adjudicating powers, and traditional chiefs have formal conciliatory powers, in practice the powers of the traditional chiefs are often understood as adjudicatory. Traditional authorities play a large and generally beneficial role. The Special Rapporteur was received by the Djermakoye, the King of the Djerma, who has immense influence and who "holds court" every day to reconcile conflicts amongst his people.

C. Other laws and institutions

28. An extremely important step in the realization of human rights has been the establishment, on 19 November 1999, of the National Commission of Human Rights and Fundamental Freedoms, charged with the promotion and protection of human rights. The strong mandate of the Commission, as defined in article 33 of the Constitution, is to realize the rights and liberties protected in the Constitution. Law 98-55 of 29 December 1998 sets out the principles for the operation of the Commission in line with the international guidelines for national institutions for the promotion and protection of human rights (Paris Principles).

29. The Special Rapporteur met with the President and other members of the Commission and was encouraged by the strength of the Commission's mandate. Economic, social and cultural rights have priority over civil and political rights. Anyone whose rights have been violated can submit a complaint to the Commission for remedy, which means that economic, social and cultural rights, including the right to food, are theoretically justiciable. Important investigations into human rights violations have been initiated following appeals made by human rights organizations. These include the initiation of one investigation relevant to the right to food - the case of the 425 children in Tibiri who became handicapped as a result of drinking contaminated tap water (see details below). The Commission has also established a subcommission to deal with issues under economic, social and cultural rights, and members expressed an interest in working on the right to food. The President of the Commission asserted that part of the work of the Commission would be to integrate economic, social and cultural rights into the work of the government ministries involved in development. The Commission has experienced problems in securing adequate finance and establishing its independence from governmental authorities, both of which are vital if the Commission is to be effective.

30. The democratization process that began at the beginning of the 1990s has favoured the creation of national non-governmental organizations, including human rights organizations. The Special Rapporteur met with one of the main human rights NGOs in Niger, the Niger Association for the Defence of Human Rights (ANDDH). This association was established in 1991 and its activities include promotion of the realization of human rights, including economic, social and cultural rights, rule of law, and awareness-raising of rights through the establishment of legal clinics and the training of paralegals to staff these clinics. The clinics offer legal advice and disseminate information on human rights and the rule of law, activities that are extremely important for broadening understanding of human rights, particularly for a population that is largely illiterate. It is also particularly important in the context of legal pluralism in Niger, with its competing sources of law and obligation.

31. The Special Rapporteur was invited to see important projects which had been put in place to disseminate information about human rights through radio and television. One of these projects is "Radio Gaya". This very informative and courageous radio station is heard all over the south of Niger and also in northern Nigeria, reaching approximately 40,000 people. It is one of the strong and independent media sources that disseminate information about human rights, as well as announcing food crises and important information on the response of the Government,

including the proposed arrival date of food aid. This can greatly help in ensuring that national and local authorities are held to account by the population. One women reported that, hungry during the soudure, she had taken part in a food-for-work project to build a mini-dam but never received the millet she was promised, and the cash payment arrived only after a long delay.

III. POLICY FRAMEWORK FOR ADDRESSING FOOD INSECURITY

32. There is also a need to look at the policies of Government that respond to the question of food insecurity in order to ensure that they allow the Government to meet its international and national legal obligations as outlined above. The element of accountability is fundamental for a rights-based approach. This means asking questions about what policies and institutions are in place, and about the processes by which the Government can be held accountable. The role of the Special Rapporteur also includes reporting positive experiences within countries such as Niger, in order to draw lessons and identify best practice examples that might serve other Governments in meeting their obligations under the right to food.

A. Government policies and institutions

33. There are a number of government policies and institutions in place to address food crises and food in security, although these do not adopt an explicitly rights-based approach.

34. The key Government policy for the management of food crises is to maintain a permanent National Food Security Stock (of 40,000 tonnes), a National Fund for Food Security (a financial reserve capable of purchasing another 40,000 tonnes of food), and a Common Donor Fund (which finances small projects for food security, such as the construction of cereal banks or small dams).

35. A Food Crisis Unit (CCA), in the Cabinet of the Prime Minister, has responsibility for monitoring the implementation and realization of action taken in food crises. The early-warning system includes the National Committee for Early Warning and Disaster Management which is responsible for collecting statistical information on the food situation and the nutritional status of the population, and for issuing early warnings of potential food crises. Both of these institutions are located in the Office of the Prime Minister. In addition, a Joint State-Donor Commission (CMC) has been established to monitor national food security and to coordinate responses to crisis situations between the Government and donors. The ONPVN, the National Office for Basic Foodstuffs of Niger, is also an important institution in the management of food crises, it is the institution responsible for maintaining the food stocks and distributing food aid. The ONPVN trucks are also used to deliver food and seeds in emergencies. However, the transport section is now slated for privatization, and there are concerns that it will become more difficult to deliver food in the future, particularly to remote areas, as private trucks will not venture into areas which are difficult and expensive to reach.

36. At the time of the food crisis that followed the poor harvest of 2000, the Government, in cooperation with the Joint State-Donor Commission, decided to initiate a programme of selling food staples at moderate prices. The Special Rapporteur believes that the prix modéré programme is an extremely important initiative and it appears to have averted a potential famine in Niger in 2001, although there was some criticism from several sources which is elaborated

upon below. Under this programme, the Government bought cereals from the grain merchants and delivered them to the villages of Niger to be sold in small quantities to the poorest and most vulnerable at a moderate, subsidized price. Controlling the quantities was aimed at ensuring that the cheaper food did go to the poorest, rather than the better-off, thereby avoiding inequities in its distribution. The food was distributed through the logistical resources of ONPVN, using its stocks and trucks. Cereal banks in villages were used as distribution points and the sales were managed by members of the community. The Special Rapporteur visited distribution points on his field visits. He believes that the prix modéré programme could serve as a useful model for other countries in similar situations.

37. Another important element of the Government's response to the food crisis was the initiative to promote off-season agriculture through the development of irrigated cultivation under a special programme sponsored by the President and development projects financed by the donor community. The promotion of off-season agriculture and the harnessing of water resources is fundamental in such an arid country.

38. To address general food insecurity, policy responses are wide-ranging and cover the spectrum of development policies. The Special Rapporteur was informed that food security has been a priority in government policies for rural development, economic growth and poverty eradication. Recently, the Government has instituted a specific policy on food security. The Operational Strategy for Food Security 2000, adopted by decree 2000-281/PRN/PM of 4 August 2000, is the first national document to specifically address food security.[6] One of the key principles of this document is that food security of the population of Niger constitutes a public service. This means that food security is considered as a key objective of the State. The policy document recognizes that "[i]n effect, the experience of Niger, like that of other Sahelian countries and numerous other countries in the world, shows that the forces of the market cannot by themselves ensure the food security of the whole of the population at all times in all places."[7] This means that the policy conceives of ensuring food security as a public function, in view of failures of the market to provide food, particularly in periods of crisis, giving the State a clear role in preventing starvation. The Special Rapporteur believes that this is an important principle and one which must be observed. The National Plan of Action for Nutrition (1997) is also a key policy document.

39. The Government has formed the Committee on National Food Security (CNSA), which coordinates multisectoral programmes and strategies related to food security in the country and develops the National Programme for Global Food Security. It will also follow up on World Food Summit commitments. The Special Rapporteur urges that this committee consider the right to food as part of its follow-up to the World Food Summit. Policies have been designed in close consultation with partners such as FAO, including the Special Programme for Food Security in Niger which is managed by the Ministry of Rural Development. A Thematic Group on Food Security has also been established comprising the United Nations agencies and other partners. This is aimed at ensuring coherence and cooperation between the different agencies and supporting the Government in the preparation of the National Programme for Global Food Security. The Special Rapporteur recommends that this committee focus on Niger's efforts in relation to the right to food.

40. In the face of frequent drought and the arid climate, government initiatives on water include the Policy and Strategies for Water and Purification and the Short-, Medium- and Long-Term Action Plans of May 2001 of the Ministry of Water Resources. These set out the guiding principles governing the use of water resources for all purposes, and specify the institutions responsible. Despite being a mostly arid country, Niger does have significant potential for harnessing water resources, but this has been little utilized to date. Surface waters include the Niger River (30 million m^3 per year, of which only 1 per cent is exploited), 1,000 temporary lakes from rain run-off, and subterranean aquifers (2 million m^3 of renewable water of which 20 per cent is exploited and 2,000 million m^3 of non-renewable water, some of which is exploited by mining activity in the north of the country). The main constraint to utilizing water resources is the question of financing for investment.[8] A comprehensive programme to address desertification and drought has also been established.[9]

41. Government policies also include a commitment to promote the building of small dams in villages, and the promotion of off-season cultivation of gardens using the rain run-off collected. This is important for extra income and for encouraging nutritional variation in diet, although most off-season vegetables grown tend to be sold as cash crops, as there is lack of knowledge about nutrition. Policies also include encouraging the establishment of cereal banks within villages to reduce reliance on the market in times when prices are very high. Cereal banks allow a community to manage its own food security, as it can store its own stocks of grain. Under guarantee systems, communities can sell their crops for cash to the cereal bank and then buy them back at the same price, often for a much cheaper price than on the market. The Special Rapporteur encourages all these very valuable activities.

B. Non-governmental organizations and associations

42. As noted above, the democratization process that began at the beginning of the 1990s has favoured the emergence of a series of very vivid, competent and highly motivated national non-governmental organizations and associations, including many organizations that work on food security from different perspectives. The Special Rapporteur met most of these organizations, as well as the associations of farmers, the Platforme paysanne, and of pastoralists, the Association pour la redynamisation de l'elevage (AREN). Activities of these organizations include promotion and financing of cereal banks, promotion of marketing strategies, provision of credit, financing of water resources, nutritional education, conflict resolution between farmers and herders, support to local communities in claiming rights, such as the right to land, through the adoption of legislative and regulatory texts (e.g. the Code rural). The Special Rapporteur believes that the emergence of non-governmental organizations within Niger is an important force for positive action, and he was impressed by the strength and commitment of these organizations. It is clear, however, that these organizations will need donor support and capacity building to carry out their activities effectively.

43. Some of these non-governmental organizations work from a rights-based perspective on food issues, for example, the national NGO ADDC, which works on consumer rights, and the international NGO CARE International, which is initiating a rights-based approach in all its activities. Most other organizations, including the State and United Nations agencies, tend to

approach food security through the prism of three essential elements - the availability, accessibility and utilization of food, particularly for the most vulnerable groups. These elements of food security are all included in the right to food. What a rights-based approach adds is setting specific responsibilities and holding the relevant parties accountable for the lack of action or any violations in relation to these responsibilities.

IV. MAIN FINDINGS AND CONCERNS REGARDING THE REALIZATION OF THE RIGHT TO FOOD

A. Progressive realization

44. Like other economic, social and cultural rights, the right to food is qualified to the extent that it must be achieved progressively and to the maximum of available resources.[10] The principal obligation is to take steps to achieve *progressively* the full realization of the right to adequate food. If regression occurs, an analysis of the reasons why and the obstacles to the realization of the right to food is needed. In the case of Niger, the level of available resources is extremely limited and it is difficult to take any positive action with respect to the right to food. Niger is an extremely poor country and, despite the cultural richness and the vitality of its social and political forces, Niger has few development options.

45. The Special Rapporteur is particularly concerned that the situation of food security in Niger is one of regression, rather than progression. Hunger and terrible poverty have become chronic and endemic. The situation is worsening and Niger's vulnerability to famine is increasing. From discussions with United Nations agencies and NGOs, it is clear that since 1970, which marked the end of a period of structural surplus in food production, the situation has declined and Niger now has a structural deficit in that regard. A graph provided by CARE International shows that cereal production is becoming increasingly erratic and food deficits increasingly severe. That cereal availability is clearly falling behind the needs of a growing population is clearly the result of a serious decline in yields, given land degradation in Niger, among many other factors and obstacles which are analysed below. This means that food crises have become a structural problem, rather than unpredictable, momentary.

46. The lack of financial resources makes it difficult for the Government to halt this regression. The poverty of the people of Niger also heightens their vulnerability to food crises. Many people in Niger believe that the real issue is poverty and underdevelopment, which heighten their vulnerability to, and can even provoke, crises. From discussions with United Nations and other organizations, it is clear that emergency food aid during periods of crisis does not necessarily solve the problem; investing in development is needed. For example, investing in mass irrigation programmes would reduce reliance on erratic rainfall; reducing poverty would increase assets which would help buffer crises. In this regard, the Special Rapporteur was encouraged by efforts to implement small irrigation schemes and build mini-dams, which will help in part to reduce the reliance of the poor on the mercy of the rain. Promoting off-season agriculture that is irrigated will also help.

47. In terms of the legal framework governing the right to food, the Special Rapporteur was encouraged by signs of growing dissemination of information about human rights, including economic, social and cultural rights. He was particularly encouraged by the establishment of the

National Commission of Human Rights and Fundamental Freedoms with the mandate to protect economic, social and cultural rights, including the right to food. However, he was concerned to note the difficulties faced by the Commission. These included a stark lack of resources and the difficulty of ensuring its independence. According to several sources, the Commission's mandate and the Paris Principles have not been fully respected, despite the individual strengths and competence of the President and other members. These factors have significantly affected its functional capacity. In its annual report for 2000, the Commission stated that a lack of understanding of the functioning of an administrative institution independent of political power hindered its activities.[11] The Government, and the military authorities, attempted to halt an investigation into a case of torture, courageously initiated by the Commission. Subsequently, the Government announced that it would appoint two government representatives to the Commission and that it would reduce the mandate of the Commission from four to two years, although no action has yet been taken after protests by NGOs and international organizations. The Special Rapporteur was concerned to note these difficulties, which represent some reversal of the progress made in the human rights field by the Government of Niger. He recommends that the independence of the Commission be fully restored and the Paris Principles respected, and that the Commission be adequately financed.

48. The Special Rapporteur was also concerned by some signs of regression with respect to the rights of women. This is important in the context of the right to food, given the extremely important role played by women in maintaining food security. In particular, he noted signs of a possible shift within Niger to the practice of Islamic Shariah in some regions and stricter interpretations of Islamic law, which run contrary to the traditional tolerance of Niger's 95 per cent Muslim population, despite the energetic efforts of the Government to combat fundamentalism. The Special Rapporteur was concerned to note the widespread rejection (on the grounds of both custom and Islamic law) of the long-standing draft Family Code which would give greater rights to women. The adoption of such a code has long been planned to harmonize the existing multiple sources of law.[12] However, a campaign by Islamic militant groups against the Code was orchestrated and prevented its adoption in 1994. Reportedly, women who supported the Code were threatened with physical harm. During the mission, State sources suggested that the Government is interested in reopening the debate on the Family Code but strong Islamic forces are still ranged against it.

B. Violations of the right to food

49. The Government is required to respect, protect and fulfil the right to food. Specific violations of these obligations should be documented, as for other violations of human rights. However, a rights-based approach to food security is relatively new. For this reason, it is generally difficult to find fully documented cases of violations of the right to food, around the world and also in Niger.

50. With regard to specific cases of violations, the Special Rapporteur's attention was drawn particularly to the case of the tragic poisoning by tap water of hundreds of children in Tibiri, 720 km from Niamey. This is a violation of the obligation to respect the right to food. The mandate of the Special Rapporteur also includes examining the nutritional aspects of water, given the close interdependence between water and food. As a result of the poisoning, it has been documented that 425 children have contracted skeletal fluorosis, a disease which causes

terrible deformities of the bones and leaves children paralysed. They are disabled for life and every movement is painful. This is owing to extremely high levels of fluoride in the water provided by the national water company, the Société nigérienne des eaux (SNE), since 1984. The water is said to contain 4.77-6.6 milligrams of fluoride per litre, far over the maximum of 1.5 milligrams per litre recommended by the World Health Organization (WHO). This case is being taken to court by the Niger Association for the Defence of Human Rights (ANDDH) to seek compensation for the children from the SNE. The national Human Rights Commission has also said that it will be pursuing an investigation into this case. The Special Rapporteur considers it important to reduce impunity in these kinds of cases and to allow for remedy to be sought in the courts.

51. The provision of water has now been privatized, but it is extremely important that the Government ensure that water quality standards are maintained. The Government should also ensure that avenues of recourse and remedy are open in case of a similar catastrophe. In meetings with the management of the newly privatized water company (Vivendi), another concern expressed was the cleanliness of the water that is sold by water sellers. Even if the company maintains high standards, water is generally distributed to water points in the cities. Water sellers purchase water at the tap and then distribute it further, but there are no checks to ensure the adequate hygiene of the containers that they use. Although immediately after privatization the cost of water has not substantially increased, this is likely in the future. In this respect, the Special Rapporteur urges the Government to ensure that water is not priced at a level which makes it inaccessible to the poorest people.

52. The Special Rapporteur's attention was not drawn to specific, documented cases of violations in terms of access to food. However, he noted the delay in response to the recent food crisis, with problems of inefficiency adding to late arrival of the food aid. For example, in the subprefecture of Gaya, in southern Niger, the Special Rapporteur was informed by local communities that food and seed assistance was due to arrive in June 2001, but did not arrive until August 2001. Criticisms of the programme of prix modéré from several sources also suggested that the quantities provided to each village were insignificant compared to the needs and some people questioned whether the total amount designated for each community really arrived. Some people also criticized the "moderate" price as still out of reach of the poorest - many people earn less than CFA 500 per day and a sack of cereal sold at the prix modéré cost CFA 10,000. The Special Rapporteur is also particularly concerned about allegations of misappropriation of food stocks collected for the programme of prix modéré in some regions. For example, the Special Rapporteur heard that a subprefect was alleged to have misappropriated important quantities of these food stocks. However, the Special Rapporteur was also encouraged to hear that the case is being pursued through the judicial process. The Special Rapporteur also visited a food distribution point on one field visit, and was impressed with the level of local participation of community members, together with State authorities, in the control and distribution of food stocks. However, he is concerned that the local hierarchies may still allow corrupt practices to take place. It should be ensured that the mechanisms put in place are strong and independent.

53. The Special Rapporteur was also concerned to hear the views of some sources who criticized the fact that the government institutions established to manage food crises, specifically the Food Crisis Unit and the National Committee for Early Warning and Crisis Management, are located in the Office of the Prime Minister. This has resulted in some confusion, for example,

the early-warning system did give an initial alert, but the warning was later withdrawn. In the view of these sources, these institutions should be totally independent. The Special Rapporteur agrees with this view, as he was concerned that different organizations had different understandings of the severity of hunger in this critical period. There is clearly an urgent need to improve the accuracy, analysis and transparency of the use of early warning data to improve coordination between the different institutions responsible for response to food crises.

54. Speculation on the food markets can also severely affect access to food, as millet prices soar during the most difficult periods. The Special Rapporteur was concerned to hear allegations that grain merchants deliberately withhold stocks of food from the market during times of difficulty. These price rises are not passed on to the farmers from whom the grain merchants purchase the crops. The Special Rapporteur was informed that the merchants tend to buy the crops at very low prices at harvest time, when farmers are most in need of cash to pay for necessities. The grain merchants then hold on to the stocks until prices are at their highest. There is clearly a need to limit this kind of speculation.

C. Obstacles to the realization of the right to food

55. Not only is Niger's climate harsh and unforgiving, but the international climate is also not conducive to resolving the fundamental problems of the Sahel. There are a number of obstacles to the realization of the right to food - both endogenous and exogenous.

56. Climatic constraints are a serious obstacle to food security in Niger. The arid climate, droughts and floods, combined with pests, make food security difficult to achieve. For the millet to grow it must rain several times over the agricultural season from June to October. If the rains do not come, then the newly planted millet withers and dies. Sometimes the rain comes, but as sudden, violent floods which ravages the dry landscape. Changes in rainfall patterns over recent years have left Niger with less rain than before in each of its three climatic zones (Saharan, Sahelian and Sudano-sahelian), which has precipitated greater migration of people from the north to the southern regions. Desertification and declining soil fertility are also accelerating, adding to these problems. Most of Niger's soils are already poor in nutritive elements and organic matter. According to the Ministry of the Environment, in one generation of 30 years, the productivity of the land has fallen from 600 kilos of millet per hectare to 250 kilos per hectare. Desertification is the result both of lower rainfall and of farming practices which have reduced the use of fallow and promoted sedentarization in areas better suited for pastoral activities.

57. The failure to harness water resources, both for irrigation and for drinking water (for people and for livestock) is also a clear obstacle to food security in Niger. Only 10 per cent of cultivation is irrigated. Although there are water resources available in Niger, as noted above, these have been little exploited. The reason is the severe shortage of financial resources to invest in irrigation given its immense costs, particularly on a large scale. There have been impressive efforts at promoting small-scale irrigation and providing wells in some villages, but these have been limited. The cost of a well depends on its depth, and the water line is much lower in some regions than in others: in some regions the water line is at 6 metres, while in others it can be as low as 80 metres. Much foreign aid is now financing small-scale irrigation projects. However,

in the past, there has been little financing given that irrigation is extremely expensive in relation to the high costs of production relative to price. As food crops cannot be produced profitably under irrigation in Niger, irrigation has not been considered a priority, even though it is clearly essential for ensuring people's food security.

58. The lack of infrastructure and markets for Niger's agricultural produce is another severe obstacle. The lack of infrastructure constrains delivery of food and seed aid. As a landlocked country, with no railway and a road network only 8 per cent of which is paved (and much of that is pitted, as anyone who has driven on Niger's roads has observed), transport costs are extremely high. At independence Niger had no rail infrastructure for access to the sea or across the country. It had only 10 km of paved road, plus one bridge across the River Niger. This has clearly improved since, but not very much. One result is the high cost of factors of production, such as fertilizer, which is therefore not very much used by poor farmers. Combined with the lack of credit in local financial markets, there is little room for intensification of agriculture in such a situation of poverty.

59. The fast growth of the population in Niger is also a concern: with a high annual rate of 3.3 per cent, the population increased from 4.8 million in 1975 to approximately 11.2 million in mid-2001. However, in Niger, population growth should be understood within a context of extremely high infant mortality - one out of every four children dies before the age of 5. Moreover, large families are often believed to be one of the best ways of ensuring food security, as it widens the networks of social support and access to resources. However, the increase in population has put further pressure on land and other resources.

60. Conflicts over land and water are increasing, between pastoralists and crop farmers. The complementarity between pastoralists and farmers has been lost, as farmers tend their own small animals and are less eager to allow pastoralists to graze their herds in the fields after the harvest. There are also conflicts - sometimes fatal - between pastoralists, often over access to water, and also between farmers. All these issues are addressed in the Code rural, which sets out clear rules for access to resources and sets up clearly marked corridors and areas of pasture so as to minimize conflict. However, the means to implement the Code rural are sorely lacking, and the land commissions set up to ensure implementation and manage conflicts exist only in some arrondissements and have not yet been able to act effectively. Criticism of the bias towards agriculture in the Code rural has given rise to calls for a new Code pastoral which would focus more attention on the different and very specific problems of the nomadic and semi-nomadic pastoralists. The Government and some organizations in Niger have also undertaken pioneering work in establishing fixed pastoral corridors and grazing lands, marked by solid white and red stakes, in an impressive effort to reduce conflicts between pastoralists and farmers.

61. With poverty and social tensions increasing, the Special Rapporteur also noted a worrying trend towards Islamic fundamentalism. Niger is 95 per cent Muslim and has long been an Islamic country, but the modern form of Islam in Niger has generally been a tolerant one and the State is secular. However, the influence of Islamists is increasing, which the Special Rapporteur believes is having negative effects in terms of, for example, discrimination against women. There are clear tensions between traditional Islamic norms and international human

rights standards - this is recognized around the world. Traditional practices such as unilateral repudiation or divorce by the husband, polygamy and child marriage are practised in Niger. However, in many other Muslim countries these practices are disapproved of and legal reforms have been instituted. Given the role of women in ensuring food and nutrition security of the family, any form of discrimination should not be allowed to persist. The Special Rapporteur was encouraged to hear that a law to penalize early marriage is in preparation, and a law criminalizing female genital mutilation is now before the Assembly.

62. The Special Rapporteur met with a number of human rights organizations and women's organizations which raised concerns about promoting human rights in the context of legal pluralism. The plurality of the legal system in Niger is part of the rich legal heritage of the country, but is also a challenge for the implementation of human rights, including the right to food. They pointed to the difficulties of disseminating information about human rights in a situation where most people do not have access to a modern court of law, with a law based on written standards. For many people, the fact that the law is not written means that it is impossible to know with certainty what is authorized and what is forbidden under the law. As the Koran and the Islamic texts do not express a detailed legal code, but often use metaphors and parables, they can be interpreted in manipulative ways. The multiplicity of sources is often to the disadvantage of women. Customary/Islamic law is applied primarily in matters concerning women, especially the family, marriage, divorce, and conflicts over land. This is particularly a problem for women, as both customary law and Islamic law legitimize their subordination in certain ways. It is for this reason the Government made many reservations on accession to the Convention on the Elimination of Discrimination against Women (see annex). The illiteracy of women in Niger, and the consequent inaccessiblity of legal discourse, is also an obstacle to improving women's knowledge about their rights and about nutrition in Niger.

63. In terms of exogenous obstacles, Niger suffers from a heavy burden of external debt which severely constrains the amount of financial resources available to spend on social services, including the maintenance of food security. During the uranium boom years in the 1970s, the Government borrowed heavily, mainly to finance investments in mining and infrastructure. Many public investments which the country was encouraged to make during that time were made with borrowed money, and Niger has since been trapped in debt. In the mid-1980s and 1990s Niger's debt service approached about half of the Government's total revenue. In January 1994, the CFA franc was devalued, doubling Niger's dollar-denominated debt overnight. Today, total external debt stands at US$ 1.62 billion. Niger has now qualified for the Heavily Indebted Poor Countries (HIPC) Initiative and a US$ 860 million debt-relief package is envisaged, under certain conditions. These include a cut in the size of the public-sector salary bill, measures to privatize more State utilities and a reduction in the number of education-sector employees. However, these measures will have severe social costs in a country where virtually all employment is in government service, as even after 15 years of structural adjustment there have not been adequate efforts to generate a strong private sector. In a country where illiteracy is at extremely high levels (92 per cent of women and 77 per cent of men are illiterate - including many people within the lower cadre of the government administration), restricting the education sector even further will leave Niger even more marginalized.

64. Similarly, the IMF imposes draconian adjustment in the agricultural sector. Niger has wealth of 20 million head of cattle, sheep and camels, which are historically much sought after and exported widely. The animals constitute essential revenue for millions of nomads and peasants. But the privatization of the national veterinary office has produced disaster: these people can no longer afford the prices of vaccinations, medicines and vitamins charged by the commercial traders. Although there are still veterinary assistants, they are far from covering the need in Niger, and people are required to pay not only for their services, but also for their transport, which, given the inadequacies of the transport network in Niger, is extremely costly. Now, the privatization of the transport section of the ONPVN is slated and may also prove a disaster. ONPVN trucks transport emergency food and seeds in times of famine, but after privatization, companies operating under the logic of the market will not venture into the remote areas on bad roads. Result: many villages risk not receiving any help. A final example: under adjustment, there is no longer a central laboratory to issue health certificates for animals as demanded under the rules of the World Trade Organization. Without certificates, buyers force the prices of the animals on the market lower, leaving pastoralists and farmers even poorer.

65. Policies of economic stabilization and structural adjustment have shown their limitations in Niger, given the failure of a vibrant private sector to emerge. Adjustment efforts have concentrated less on stimulating the growth of a national capitalist private sector and rather more on reducing the public sector. Thus, the negative effects have outweighed the positive effects. The withdrawal of the State, under programmes of adjustment and austerity, has further limited development within the social sectors, including health, education and food security. This suggests that there is an urgent need for deepening reflection on the economic role of the State in an economy which is so underdeveloped. Economic liberalization is unlikely to generate significant growth in the absence of infrastructure in the country. Economic liberalization in Niger has not particularly improved its minimal participation in the global economy. This is partly because of its high transport costs and its low capacity for production, but also because the only products it has to offer as exports are uranium and agriculture. While these are important sources of revenue (particularly uranium and the export of livestock), Niger is not very integrated into the world economy, as there is little else to export. Devaluation of the franc zone was not a measure that significantly helped Niger's exports, given its heavy dependence on trading partners already within the franc zone. Although Niger does export to its huge neighbour Nigeria, most of this trade is carried out in the informal sector. Effectively excluded from the international market, there is little that Niger can do with a small domestic market, with minimal infrastructure and expensive transport. There is little the country can produce that is likely to prove a "comparative advantage", when Niger is subject to far more constraints even than its close neighbours.

66. This is not to ignore that there have been some economic successes, including Galmi onions which now have 70 per cent of the market share in Côte d'Ivoire. The European markets have also been penetrated by local providers of gum arabic, which has also generated a local forestry sector. There are also many small initiatives, some undertaken by NGOs, that have shown success, as the Special Rapporteur witnessed on his field visits. These include the projects undertaken by the Swiss cooperation agency in Gaya and Dosso, including the cultivation of off-season crops such as manioc, sugar cane, maize and onions, which allow some

diversification of income, and community efforts to combat desertification and to establish community cereal banks. The Special Rapporteur also recognizes that there are several important projects initiated by the World Bank to combat poverty, such as the promotion of small-scale irrigation.

67. However, the Special Rapporteur also believes that a key obstacle to the realization of the right to food in Niger is the profound internal contradictions operating in the United Nations system.[13] On one hand, the United Nations agencies emphasize social justice and human rights, including the right to food. United Nations agencies, including FAO, UNDP, UNICEF, WFP and many others, do excellent work in promoting development. On the other hand, the Bretton Woods institutions, along with the Government of the United States of America and the World Trade Organization, oppose the right to food in their practice by means of the Washington Consensus emphasizing liberalization, deregulation, privatization and the compression of State domestic budgets, a model which in many cases produces greater inequalities. He believes that the mission to Niger showed these contradictions clearly at work. Niger is a country in extreme poverty, but the IMF still imposes draconian structural adjustment. The country has little room to manoeuvre within the constraints imposed by the IMF and the World Bank. All other donor financing, including funds to feed the population in times of crisis, depends on the fact that the Government has an agreement in place with these Bretton Woods institutions. The key obstacle to food security in Niger is, therefore, the difficulty of mobilizing finances.

V. CONCLUSIONS AND RECOMMENDATIONS

68. The Special Rapporteur believes that the Government of Niger is doing what it can within the limits of its resources to progressively realize the right to food. However, the Special Rapporteur recommends that:

(a) Urgent attention must be paid to the regression with respect to food security and the increasing vulnerability of the people of Niger to famine. Investing in development to reduce this vulnerability must be given priority;

(b) It must be ensured that remedies for violations of the right to food and water can be sought in the courts in order to reduce impunity for these violations. This should include judicial action, for example in cases of misappropriation of food stocks or poisoning of drinking water. Action should be taken against speculation on food markets, when this is deliberately orchestrated for the purpose of increasing profits during a time of famine;

(c) The independence of the Food Crisis Unit and the National Committee for Early Warning and Crisis Management must be established to ensure the accuracy, analysis and transparency of the use of early-warning data and to promote a rapid response to food crises;

(d) The independence of the National Commission on Human Rights and Fundamental Freedoms must be fully restored and the Paris Principles respected, and the Commission must be adequately financed;

(e) Given the vital role that women play in ensuring food security, the implementation of legislation to protect the right of women to be protected against discrimination is a priority. This could be based on the existing draft Family Code or new protective legislation. Laws against early marriage, female genital mutilation and other discriminatory traditional practices should be implemented;

(f) The Code rural should be fully implemented and adequate financing sought for the establishment of land commissions to properly secure land tenure and manage conflicts. The Code pastoral and the concerns of pastoralists should be given equal priority to the concerns of farmers;

(g) The harnessing of water resources for drinking water and irrigation must be given priority to ensure food security, particularly of rural people. Priority must also be given to improving transport infrastructure and markets for Niger's agricultural produce. The problems of desertification and declining soil fertility must receive adequate attention and financing to ensure that agricultural yields do not continue to fall, thereby further increasing food insecurity;

(h) The privatization of ONPVN should be resisted, unless other measures are put in place to ensure that emergency food aid will be transported to isolated villages. An adequate veterinary public service should be re-established;

(i) The international community must focus on reducing the current external debt of Niger. The HIPC Initiative must be fully implemented to ensure that Niger's debt burden is reduced, but without conditions that severely paralyse the social sectors of health, education and food security;

(j) The profound internal contradictions in the United Nations system must be resolved so that they do not become an obstacle to the realization of the right to food for countries such as Niger. There is an urgent need for deepening reflection on the economic role of the State in an economy which is so underdeveloped, and to find ways of ensuring that States, including Niger, are able to meet their binding international and national obligations with respect to the right to food.

Notes

[1] United Nations Development Programme, Human Development Report 2001, http://www.undp.org/hdr2001; Food and Agriculture Organization of the United Nations, State of Food Insecurity in the World 2001, http://www.fao.org/docrep/003/y1500e/y1500e00.htm; FAO Niger, Preparation of the National Programme for Global Food Security, 2001.

[2] World Bank, Socio-Economic Differences in Health, Nutrition and Population in Niger. Paper prepared by Davidson R. Gwatkin, Shea Rustein, Kiersten Johnson, Rohini Pande and Adam Wagstaff for the health, nutrition, population (HNP)/Poverty Thematic Group of the World Bank, May 2000.

[3] Data from 1992 compared to data from 1998, cited in "Stratégie opperationnelle de securité alimentarie pour le Niger", cabinet du premier ministre, Comité national du systeme d'alerte précoce et de gestion des catastrophes, p. 8.

[4] Statistics provided by Helen Keller International in Niger.

[5] There are also distinct regional variations in malnutrition. For example, for severe and moderate child malnutrition, the departments of Maradi (21.1 per cent severe, 42.9 per cent moderate) and Zinder/Diffa (20.7 per cent, 37.9 per cent) are much more affected than Tillaberi (9.9 per cent, 24.8 per cent), Dosso (10 per cent, 24 per cent) and Niamey (4.8 per cent, 19.2 per cent). The most recent data record that 25 per cent of people suffer from protein-energy malnutrition, but these data date back to 1985. See UNDP, Rapport National sur le Développment Humain, Niger 1998.

[6] FAO, Élaboration du document de bilan commun de pays (CCA), Securité alimentaire et nutrition, rapport provisoire par Idrissa Soumana, consultant national, 2001.

[7] "Stratégie operationnelle de securité alimentarie pour le Niger", Cabinet du premier ministre, Comité national du systeme d'alerte précoce et de gestion des catastrophes, p. 17.

[8] See Ministry of Water Resources, "Liste des projets dont le financement est à rechercher et des fiches de syntheses".

[9] See "Programme d'action national de lutte contre la desertification et de gestion de ressources naturelles" République du Niger, Cabinet du premier ministre, Conseil national de l'environnement pour un développement durable, November 2000.

[10] Under article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights.

[11] Commission nationale des droits de l'homme et des libertés fondamentales, *Rapport annuel d'activités 2000.*

[12] See the excellent document produced for CARE International for the Conference sur l'opportunité de la relance du débat sur l'élaboration d'un code de la famille by Sidikou Fatoumata and Eliane Allagbada, Niamey, May 2000. This explains the content of the Code, compares the differences between the legal systems and analyses the factors for the blockage of the adoption of the Code.

[13] See Jean Ziegler, "Schizophrénie des Nations Unies", in Le Monde Diplomatique, Paris, November 2001.

Annex

RESERVATIONS AND DECLARATIONS TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN MADE BY NIGER

Reservations

Article 2, paragraphs (d) and (f)

The Government of the Republic of the Niger expresses reservations with regard to article 2, paragraphs (d) and (f), concerning the taking of all appropriate measures to abolish all customs and practices which constitute discrimination against women, particularly in respect of succession.

Article 5, paragraph (a)

The Government of the Republic of the Niger expresses reservations with regard to the modification of social and cultural patterns of conduct of men and women.

Article 15, paragraph 4

The Government of the Republic of the Niger declares that it can be bound by the provisions of the paragraph, particularly those concerning the right of women to choose their residence and domicile, only to the extent that these provisions refer only to unmarried women.

Article 16, paragraph 1 (c), (e) and (g)

The Government of the Republic of the Niger expresses reservations concerning the above-referenced provisions of article 16, particularly those concerning the same rights and responsibilities during marriage and its dissolution, the same rights to decide freely and responsibly on the number and spacing of their children, and the right to choose a family name.

The Government of the Republic of the Niger declares that the provisions of article 2, paragraphs (d) and (f), article 5, paragraphs (a) and (b), article 15, paragraph 4, and article 16, paragraph 1 (c), (e) and (g), concerning family relations, cannot be applied immediately, as they are contrary to existing customs and practices which, by their nature, can be modified only with the passage of time and the evolution of society and cannot, therefore, be abolished by an act of authority.

Article 29

The Government of the Republic of the Niger expresses a reservation concerning article 29, paragraph 1, which provides that any dispute between two or more States concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration.

In the view of the Government of the Niger, a dispute of this nature can be submitted to arbitration only with the consent of all the parties to the dispute.

Declaration

The Government of the Republic of the Niger declares that the term "family education" which appears in article 5, paragraph (b), of the Convention should be interpreted as referring to public education concerning the family, and that in any event, article 5 would be applied in compliance with article 17 of the International Covenant on Civil and Political Rights.